

Appl. No. 10/714,327
Amdt. Dated July 6, 2005
Reply to Office Action May 2, 2005

Docket No. 58091-011400

RESPONSE TO EXAMINER'S REJECTIONS/REMARKS

Responsive to the Office Action mailed May 2, 2005, Applicant thanks the Examiner for the allowance of Claims 2, 9, and 10 if re-written. In the present response, the Applicant has amended Claim 1. Also, Applicant has added Claim 15 which is supported in the specification as filed in page 4, lines 3-8. No new subject matter has been added to these amended claims.

Claim Rejections - 35 U.S.C. §102

Examiner has rejected Claims 1, 3, 4, 6, 7, 8, 13 and 14 under 35 U.S.C. 102(b) as being anticipated by Rudell et al. (U.S. Patent No. 6,062,936). Examiner asserts that Rudell et. al discloses all the elements of the forgoing claims. However, Rudell et al. fails to disclose all the elements of the Claims 1, 3, 4, 6, 7, 8, 13 and 14. The Federal Circuit states that "all elements of the claimed invention must be disclosed in a single reference for anticipation to exist." Atlas Powder Co. v. E. I. DuPont de Nemours & Co., 750 F.2d 1569, 224 U.S.P.Q 409 (Fed. Cir. 1984). Furthermore, missing elements cannot be supplied by the knowledge of one skilled in the art or the disclosure of another reference in order to give rise to an anticipation rejection. Structural Rubber Products Co. v. Park Rubber Co., 749 F.2d 707, 223 U.S.P.Q 1264 (Fed. Cir. 1984).

Specifically, Rudell et al. does not disclose an activation conduit for creating a vacuum pressure differential in the body as disclosed in independent Claim 1. Further, it does not disclose using the vacuum pressure differential to close the electrical circuit for operating the device.

Instead, Rudell et al. discloses a toy that includes a first electrode and second electrode that are coupled to an electrical circuit. The first electrode is also coupled to a consumable substance and the second electrode is couple to a handle. However, unlike the present disclosure, the consumable substance in Rudell et al. is not candy. Because candy, being dry, the hard sugar crystals do not form charged ions in a solution which is essential for electrical current to flow. Thus, candy having a very low electrical conductivity is not an electrical conductor. Therefore, Rudell et al does not disclose all the elements of independent Claim 1 and its corresponding dependent claims. Accordingly, Rudell et al. cannot be considered to anticipate

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these claims and the Examiner is respectfully requested to withdraw these rejections with respect to Claims 1, 3, 4, 6, 7, 8, 13 and 14.

Claim Rejections - 35 U.S.C. §103(a)

Examiner has rejected Claims 5 under 35 U.S.C. 103(a) as being unpatentable over Rudell et al. in view of Baker (US Patent No. 6, 884, 447) and Claim 11 under 35 U.S.C. 103(a) as being unpatentable over Rudell et al. in view of Fernandez (US Patent No. 6,135,606).

However, as discussed above, Applicant independent Claim 1 is considered to be patentable over the prior art for the reasons discussed above. Therefore, the Examiner is respectfully requested to withdraw these rejections with respect to Claims 5 and 11.

Remarks

Applicant has complied with all requirements made in the above-referenced communication. In view of the foregoing, it is respectfully submitted that the pending Claims in the application are in condition for allowance. Allowance of the pending claims at this date is courteously solicited

If, for any reason, the Examiner finds the application other than in condition for allowance, the Examiner is respectfully requested to call Applicant's undersigned representatives, attention Eglia Nair Flores at (310) 586-6511 to discuss the steps necessary for placing the application in condition for allowance.

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The Commissioner is hereby authorized to charge for any required fee in connection with the submission of this paper, any additional fees which may be required, now or in the future, or credit any overpayment to Account No. 50-2638. Please ensure that Attorney Docket Number 58091-011400 is referred to when charging any payments or credits for this case.

Respectfully submitted,

GREENBERG TRAUIG, LLP

Date: July 6, 2005

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